

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 974 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

PRAGJIBHAI @ KANUBHAI

MANJIBHAI PATEL

Versus

RASIKLAL MANGANLAL MODI AND OTHERS.

Appearance:

MR DN PANDYA for Petitioner

MR MB GANDHI for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 09/07/1999

CAV JUDGEMENT

The present respondent-original plaintiff filed a suit being H.R.P.Suit No.2849 of 1982, in the court of Small Causes at Ahmedabad, against defendant No.1 Manjibhai Dungarbhai Patel and defendant No.2 Pragjibhai alias Kanubhai Manjibhai Patel. During the pendency of the suit, the defendant No.1 Manjibhai Dungarbhai Patel died and hence defendant No.2 Pragjibhai @ Kanubhai Manjibhai Patel who was defendant No.2 being his son and Maniben being his widow and two daughters Bachiben

Lilaben and Labhuben were impleaded as heirs. Thereafter defendant No.1/1 wife of Manjibhai Dungarbhai Patel also died and hence son Pragjibhai and two daughters Bachiben @ Lilaben and Labhuben remained as defendants in the suit. The original defendant No.2 Pragjibhai @ Kanubhai Manjibhai Patel has preferred this revision against Rasiklal Maganlal, heir of original plaintiff who died pending suit Maganbhai Dungerbhai Patel and others i.e. Bachiben and Labhuben. The suit was filed on various grounds i.e. on the grounds of arrears of rent, on the ground of bonafide requirement of the plaintiff, on the ground of sub-letting, on the ground of non-user and on the ground of acquiring suitable premises by the defendant. The trial court dismissed the suit and negatived all the grounds and, therefore, the plaintiff Rasiklal Maganlal Modi preferred an appeal against the heirs of Manjibhai Dungarbhai Patel before the Appellate Bench of Small Causes Court, Ahmedabad.

2. Against all the defendants/respondents in appeal only three points were urged and those were regarding 1) whether learned trial Judge erred in not accepting the case of the appellant-plaintiff about his requirement of the suit premises reasonably and bonafide for his personal use and occupation, 2) whether learned trial Judge erred in coming to the conclusion that greater hardship would be caused to the defendants if the decree for eviction is passed, 3) whether the learned trial Judge erred in holding that the appellant-plaintiff has failed to establish that the defendant has acquired another suitable residence. The learned Appellate Bench of Small Causes Court heard both the sides, even recorded additional evidence and regarding all the three issues, learned Appellate Bench came to the conclusion that all the three issues are required to be decided in favour of the appellant-plaintiff and hence appeal was allowed and eviction decree on the above mentioned two grounds was passed. Being aggrieved, the Civil Revision Application is filed by original defendant No.2 against plaintiff Rasiklal Maganlal Modi and against legal heirs of deceased Maganbhai Dungerbhai Patel.

3. Learned Counsel Mr. Girish Vyas for Mr. D.N.Pandya for petitioner and Mr. M.B.Gandhi on behalf of respondent No.1 were heard. Other respondents are served but have not appeared.

4. The Appellate Bench of Small Causes Court passed the decree because it came to the conclusion that Labhuben and Lilaben sisters of present petitioner Pragjibhai were residing in their own house. The

deceased original tenant has acquired a property in the name of his wife. The family of the plaintiff is bigger than the family of the defendants. Even economic hardship was held to be tilted in favour of the plaintiff and hence the decree of eviction was passed. Learned Counsel Mr. Girish Vyas has vehemently urged, firstly, that the Appellate Bench erred in not exercising the jurisdiction vested in it because the learned Appellate Bench was required to hold that two sisters of present petitioner and daughters of deceased original tenant were the family members of deceased tenant and as such, they were included in the definition of sec.5(11)(c) of the Bombay Rent Act. While considering the issue of hardship, the Appellate Bench was required to consider the hardship of these two ladies i.e. Lilaben and Labhuben, being daughters of deceased original tenant and sisters of present petitioner. Mr.Vyas urged that the definition of tenant under sec.5(11)(c) of the Bombay Rent Act is inclusive one and not exclusive one. It includes all the legal heirs whether residing or not with the deceased tenant at the relevant time in suit premises. At least, such heirs are entitled to claim tenancy right as legal heirs through the heirs who acquired tenancy right under sec.5(11)(c), to be more clear. Mr. Vyas argued that though Labhuben and Lilaben were not residing with the deceased tenant at the relevant time in the suit premises even then being natural heirs of deceased tenant they can claim tenancy right through the present petitioner i.e. Pragjibhai, the son of deceased tenant and, therefore, hardship of these two ladies was required to be considered by the Appellate Bench of Small Causes Court and, Appellate Bench of Small Causes Court failed to exercise the jurisdiction vested in it and this is an error of law. While the trial court after considering hardship of these two sisters, refused to pass decree on the ground of bonafide requirement and decided the issue of hardship in favour of the defendant. Secondly, Mr. Vyas complained about the mode of appreciating the evidence. It is argued that though the evidence cannot be reappreciated in this revision but the approach of the Small Causes Court in appreciating the evidence on record was not correct and legal in first appeal and hence this is the perverse findings of fact. Learned advocate Mr. Gandhi on behalf of respondent No.1 has supported the decision of the Appellate Bench of Small Causes Court and he has taken this court to the judgment of the learned Appellate Bench of the Small Causes Court.

5. While considering the first contention raised on behalf of the petitioner, Mr.Vyas relied upon a decision

of Full Bench of this court in the matter of Babubhai and others Vs. Shah Bharatkumar Ratilal and others reported in AIR 1980 Gujarat page 89, wherein the Full Bench of this court while disproving of the ratio laid down in the case of Nanumal Rajumal Vs. Lilaram Vensimal (1977) 18 Guj.LR page 858 held that the same is not a good law in view of the Supreme Court decision in Damadilal Vs. Parashram - (1976) 4 SCC 855. The Full Bench of this High Court in Babubhai's case held that there is no visible distinction between the contractual tenancy and statutory tenancy and, therefore, the statutory tenancy is also a heritable right and held vide para 24 that, all the heirs of a deceased tenant could be entitled to inherit the tenancy right even if sec. 5(11)(c) of the Bombay Rent Act, provides that transmission of such rights only to the members of the family residing with the deceased tenant. It appears that, this view is taken because if the contractual tenancy is inheritable to all natural heirs and since when there is no visible distinction between contractual tenancy and the statutory tenancy, the benefit of tenancy rights are required to be extended to all the heirs of the deceased statutory tenant.

6. It is true that in Babubhai's case (supra) the Full Bench of this court took the above view, but, thereafter in Smt. Gian Devi Anand Vs. Jeevan Kumar and Others - reported in AIR 1985 SC p.796, Supreme Court took the view that, "It is, however, entirely for the Legislature to decide whether the Legislature will make of inheritance, and the manner and extent thereof and in the absence of right of inheritance, and the manner and extent thereof and in the absence of any condition being stipulated with regard to the devolution of tenancy rights on the heirs on the death of the tenant, the devolution of tenancy rights must necessarily be in accordance with the ordinary law of succession." Thus, the Supreme Court held that ordinarily the inheritance will take place according to the law of succession for statutory tenancy also in the case of death of the tenant but where a statute provides a particular mode and manner for the devolution of such rights then the tenancy rights will be inherited according to the provision of that statute only. This issue came up for consideration again before the Full Bench of this court in the matter of Bhavarlal Lalchand Shah Vs. Kanaiyalal Nathalal Intwala reported in 1985(2) GLR Page 1177, wherein Full Bench of this court specifically held that the observation of the Full Bench in Babubhai's case (supra) in Para 23 and 24 will have to be read subject to the ratio of the decision of the Supreme Court in Smt. Gian Devi case (supra) and

ratio in the decision of Babubhai's case will stand diluted or modified accordingly, though the Full Bench said that Babubhai case will not be treated as impliedly overruled.

7. Now, therefore from the above discussion, it is clear position of law that those family members who were residing with the deceased tenant at the time of death of the tenant will inherit the tenancy right as per sec.5(11)(c) of the Bombay Rent Act. The attempt of Mr.Girish Vyas to stretch the horizon of the provision beyond the ratio of Smt. Gian Devi's case (supra) must fail and it cannot be held that both the sisters of Pragjibhai and the daughters of original deceased tenant who were admittedly not residing with the deceased tenant at the time of death of the tenant in the suit premises were tenant by succession or it cannot be considered that they were the family members whose hardship can be taken into consideration while hardship of tenant i.e. defendant No.2 Pragjibhai @ Kanubhai Manjibhai Patel was to be considered. Lower Appellate Court did not fell in error in this regard as stated by Mr. Vyas. But, on the contrary, the lower Appellate Bench corrected the error of law committed by the trial court which considered the hardship of two daughters Lilaben and Labhuben. Though lower Appellate Bench came to the conclusion that, even if, these two ladies are to be considered to be a family members of Pragjibhai, they occupy their houses as per their own evidence and hence they were not likely to face any hardship if eviction decree was to be passed against the defendant Pragjibhai.

8. Mr. Vyas argued at length regarding the manner and mode of appreciating the evidence by the lower Appellate Court and argued that the evidence of defendants has been wrongly discarded and reliance is improperly placed. To consider this argument of Mr. Vyas, the record was scrutinised to satisfy whether conclusion arrived at by Appellate Bench was according to law. In this exercise, it was found that Lower Appellate Court considered the area of the premises occupied by the landlord. The size of the family of landlord. The landlord has two sons-both married during pendency of litigation. The Lower Appellate Court also considered that, except the premises occupied by the landlord, there is no other premises in the possession of landlord. In comparable hardship, Lower Appellate Court took cognizance of a fact that deceased tenant had acquired property in the name of his wife. This proposition was vehemently objected by Mr.Vyas, and it was argued that word "acquired" is not properly construed by the Lower

Appellate Court. But Lower Appellate Court rightly rejected the evidence of defendants, which was according to Lower Appellate Bench not creditworthy. It is not necessary to go in the details but it is clear that Lower Appellate Court has not committed any illegality in rejecting that evidence because at different times defendants came with different theories. The Lower Appellate Court also took the cognizance of comparative economic hardship of landlord and tenant and rightly tilted the balance in the favour of landlord. Lower Appellate Court also considered an admitted fact that both the sisters were residing with their children in their respective houses. After considering all the relevant factor properly, lower Court has come to the conclusion that the suit premises were required by the landlord bonafidely and reasonably for his personal occupation and taking into consideration all relevant aspect of comparative hardship and taking into consideration about one premises available to tenant, the Appellate Bench has come to the conclusion that in not passing of the decree of eviction the landlord will suffer greater hardship than tenant, while in passing the eviction decree tenant is not likely to suffer greater hardship. The Appellate Bench has based the conclusion on the evidence on the record only and has assigned sound reasons for accepting or rejecting the evidence. Therefore there is no error of law apparent on face of record nor the conclusions are so manifestly perverse as to cause any miscarriage of justice. Mode and manner of appreciating the evidence as applied by the Appellate Bench is quite judicial and Appellate Bench has corrected the errors of law and fact committed by the trial court.

9. In view of the above discussion, in revisional jurisdiction where a court has to satisfy itself whether the decision is according to law and now scrutinising the record it clearly appears that Lower Appellate Court neither committed any illegality in appreciating the evidence nor the finding is perverse so as to be an error apparent on face of record. Interference therefore is uncalled for.

10. In this view of the matter, the revision application stands dismissed. Notice is discharged. No order as to costs. However, since the premises is residential, in the interest of justice, it appears that tenant be given some time for evicting the premises and therefore respondent No.1 i.e. plaintiff is directed not to execute the eviction decree till 31st August, 1999, so the tenant can have sufficient time to vacate and/or to approach the higher forum.

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